



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

Mr. Ryan Tredway
Staff Attorney
Legal and Compliance Division MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-2678

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120109.

The Texas Department of Insurance (the department) received a request for ten categories of information relating to any insurance policy "that would pay policy benefits to an employer upon the event or occurrence of the death of one [of] the employer's [sic] employees." You contend that the requested information is excepted from required public disclosure by sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents that you have submitted.¹

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the department has opened two enforcement cases concerning the companies and type of policies at issue in this request. You state that the department is actively pursuing a resolution to these matters, but you are prepared to move forward with litigation should other attempts at resolution fail. You have also provided this office with two letters which evidence your assertions. You have shown that litigation is reasonably anticipated. See Open Records Decision No. 557 (1990). The submitted documents also relate to the anticipated litigation. *Texas Legal Found.*, 958 S.W.2d at 483.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). The department may, therefore, withhold the requested information under section 552.103 except for information that has been obtained from or provided to the opposing party in the anticipated litigation.

Because we make a determination under section 552.103, we need not address your additional argument against disclosure. We note, however, that some of the requested information is confidential by law and must not be released. Gov't Code § 552.101 (common-law privacy); *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 600 (1992), 545 (1990) (personal financial information not relating to the financial transaction between an individual and a governmental body). We have marked the information that must be withheld based on a right of privacy. Further, some of the information may be confidential proprietary information. Gov't Code § 552.110 (trade secrets and commercial or financial information). Based on your arguments and the submitted information, however, we are unable to make

a determination at this time as to the confidentiality of this material. We advise the department to use caution before releasing this information. Gov't Code § 552.352 (distribution of confidential information is criminal offense). You may seek a determination from this office if property interests are involved in the release of the information. Gov't Code § 552.305.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 120109

Enclosures: Marked documents

cc: Mr. Michael Myers
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(w/o enclosures)